

January 30, 2006

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: CS Docket No. 97-80: Status Report Update of the Consumer Electronics Association

Dear Ms. Dortch:

The Consumer Electronics Association (“CEA”) hereby submits a status report as called for in the Second Report and Order in CS Docket No. 97-80, FCC 05-76, 20 FCC Rcd 6794 (rel. March 17, 2005) (“Second R&O”). In the Second R&O, the Commission reviewed progress in negotiations, and pending issues, between the consumer electronics and cable industries, involving at times other interested parties, and required (par. 34) that “NCTA and CEA shall file joint status reports and hold joint status meetings with the Commission on or before August 1, 2005 and every 60 days thereafter on progress in bidirectional talks and a software-based conditional access agreement.” The Commission subsequently adjusted its initial (and hence subsequent) reporting deadlines.¹ CEA and NCTA duly filed a joint status report and November 30, 2005, and each supplemented this joint report with separately filed appendices. The parties have agreed that for this “60 day update” it would be most useful to the Commission for each to file a supplement to the November 30 joint report.

Areas of Discussion

While the reporting period was impacted by the December holiday season and the January Consumer Electronics Show, the parties had discussions at the level of smaller groups (less than the entire caucus for both sides) and work groups focusing on the following areas:

- ** Review of Nov. 30 filings
- ** OCAP Specialists Work Group
- ** OCAP application and product testing
- ** Licensing element of Phase II framework

¹ Media Bureau Announces Deadlines for Filing Reports Related to the Commercial Availability of Navigation Devices, DA 05-1930 (rel. Jul. 1, 2005); Order, CS Docket 97-80, DA 05-2645 (rel. October 3, 2005).

Review of November 30 Filings

It is now well established, as a factual matter, that in original form and documentation, OCAP was constrained and incomplete as to its ability to accommodate devices with features and functions beyond those needed only for the receipt, rendering, and storage of cable content, which is a flaw from the CE perspective. Nor, prior to the subject being raised in our inter-industry discussions, was there any comprehensive approach for addressing the daunting application testing issues posed by OCAP. Yet, in its November 30 filing, NCTA attributed any positives to its bilateral processes with individual licensees and ECR participants, and any negatives to the “unwieldy” nature of large, multi-industry discussions (which in fact were those related to copy protection, not our core CE-Cable discussions). The CE side hopes that this tendency does not portend a return to principal reliance on bilateral dealings under NDA, rather than on the open inter-industry framework process as recognized by the Commission and which is the subject of these reports.

The Cable side has expressed the view that some criticisms and characterizations of Cable positions had been inaccurate and / or unwarranted. After the concerns of each side with the other’s Appendix were aired, both sides expressed their continued commitment to this process, and established the items reviewed below as near-term priorities. The CE reaction to the DCAS-related filings is set forth in CEA’s January 20 filing in this docket.

OCAP Specialists Work Group

In September, 2005, the two caucuses established a joint technical team of 5 representatives each, to analyze and address aspects of OCAP middleware, and/or its documentation, tasked with producing joint recommendations to the inter-industry group about how to enhance and clarify the potential for multi-purpose devices to serve as OCAP hosts in a way that would enhance consumer satisfaction with both cable services and other features and functions of the device. Since then, the “joint technical team” has been working on resolving OCAP issues resulting from consumer use-cases illustrating problems in multifunction products. The most advanced issues are defining when OCAP is in control (and when it is not), sharing resources between CE and cable applications like remote control keys (e.g. Channel Up/Down), graphics, and tuners. The team has met twice in the last 2 months. Outputs of the joint technical team have the status of possible solutions for consideration by the caucuses, individually and then for mutual resolution. After passing on to the full caucus group its handling of issues presently being addressed, the joint team will move on to those related to support and consumer control of DVR functions. To date, there has been no draft of proposed changes yet submitted from the joint tech team to the larger caucuses, for discussion and resolution by them. The present goal is for such a draft to be provided by the end of February. What therefore remains untested and unclear is how and in what time period any proposed changes will propagate into a formally issued revision to the OCAP specification, currently I16 - issued 3 August, 2005, which was the goal identified by the NCTA in both its report and proposed regulatory language filed with the FCC on 30 November, 2005. (Nor is the path to recognition by a due process standards organization – the objective in CEA’s draft regulations – clear at this time.)

OCAP Application and Product Testing

The construct set out in the CE side's November 30 Appendix describes the framework for discussions on this subject:

[A]ll cable operator applications such as electronic program guides, and on-demand content selection/operation would first be tested against a set of previously approved, known-good receivers. If/when testing is successful, the application could be fielded, however it would also be submitted to a larger interoperability test center having a much larger array of IDCR products in order to help find/resolve issues not caught in the official testing. Significant problems noticed during this larger testing could then be factored into the required test process for applications and products in the future as well as provide a knowledgebase of "dos and don'ts" for developers.

The parties met in both December and January, in a smaller group context, primarily to continue discussing and addressing the challenges posed by testing potentially large numbers of OCAP applications on a variety of host devices. Originally, as is described above, the discussions had focused on pass/fail testing being required of products and applications headed for commercial launch, and additional voluntary broader scope testing for interoperability. However in the most recent meeting, Cable proposed being able to launch new applications on their leased devices *without* any required testing and *then* submitting them for testing on competitive entrant devices -- with no mechanism to assure that the applications would ever run properly (or be fixed to run properly within a reasonable time) on those competitive devices. The CE side found this approach unsatisfactory, and further discussions on this subject are already scheduled.

For CE manufacturers, equal support for competitive entrant devices is a fundamental concern. As we note above, we put the entire OCAP application testing issue "on the table" and have come a long way in the inter-industry process to achieve a mutual appreciation of the dimensions of the problem posed by the testing of OCAP applications. In particular, an inadequately tested "unbound" application, whose function is not limited to a particular program or channel, could threaten the essential functions and viability of a DTV receiver that represents one of a family's larger investments. This case is especially problematic when faulty operation, resulting from a faulty application downloaded by the cable provider without the consent or knowledge of the consumer, has the potential to impair or disable the functionality of the consumer's DTV receiver. Yet it is these applications, in particular, which the Cable group proposes to put into commercial release after testing *only* on proprietary set-top boxes, with *no* intent to test these critical applications on competitive entrant devices. (Cable *does* acknowledge the need for such testing, but only *after* commercial deployment may occur.)

One of the points previously made by the Cable side in persuading the CE side to accept a *requirement* that all competitive entrant bi-directional navigation devices must run OCAP was *common reliance* – Cable rejected a standardized "protocols" approach in part because it would

require MSOs to maintain one application support system for OCAP products, and another for “protocol” products. Yet the approach of testing, prior to commercial deployment, *only* on proprietary devices departs radically from this unifying principle, and would relegate the competitive entrant products to a separate and manifestly unequal regime. Competitive manufacturers would face the unpalatable choice of somehow locking new unbound applications out of their products until testing has occurred, or opening their products to such applications irrespective of the damage they might do to consumer use and satisfaction when deployed on a competitive product.

This particular aspect of the testing issue is not the only one that remains to be worked out, but it was the main focus of the most recent meeting. Discussions on this and other aspects of testing are scheduled.

Licensing Element of Phase II Framework

Counsel for the cable and CE caucuses have met to discuss matters potentially related to a model license or licenses to be submitted to the FCC as an element of a “Phase II” framework, conceptually similar to the model DFAST license in the “Phase I” framework. This approach is as opposed to the licenses currently posted by CableLabs at www.Opencable.com. There has been no agreement as to circumstances in which such a model license would be an outcome of these CE-Cable negotiations. The views and concerns of the parties were substantially set out in the appendices to the November 30 Joint Status Report; in the “DCAS”-related filings by NCTA on November 30; and in CEA’s January 20 Comment on those filings.

Respectfully submitted,

Of counsel:

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